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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,127	11/25/2003	Herbert Eichenauer	PO-7827/LeA 36,408	6193
157	7590	06/02/2005	EXAMINER	
BAYER MATERIAL SCIENCE LLC 100 BAYER ROAD PITTSBURGH, PA 15205			MULLIS, JEFFREY C	
			ART UNIT	PAPER NUMBER
			1711	
DATE MAILED: 06/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/721,127	Applicant(s) EICHENAUER ET AL.	
	Examiner Jeffrey C. Mullis	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11-03, 6-07</u>   | 6) <input type="checkbox"/> Other: _____                                    |

The drawings are objected to because they are not clear enough. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Figure 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the

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applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Applicants' reference "AR" has not been considered since no concise explanation has been considered as required for non-English documents not does the ISR mention it.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 2 5 8-20 22 and 23 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Sun et al. (WO 01/16230 or US 6,716,916).

It is noted that the US patent corresponds to the PCT patent and since the US patent is in English it will be referred to since the two documents are presumably the same.

Sun et al. disclose a polycarbonate composition containing two grafted polybutadiene lattices (having different particle sizes) which are grafted using peroxydisulfate in the presence of ascorbate, i.e. redox conditions and thus each latex was produced using persulfate and each using redox initiation. Note Example one and Table one and that the lattices are "coagulated" using magnesium sulfate/ acetic acid. Note that paragraph 109 of applicants' published application discloses that magnesium sulfate/acetic acid may be used for precipitation and the coagulation of patentees and co precipitation of applicants therefore appear to be the same.

Claims 3 6 7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sun et al., cited above in view of Van der Helder (WO 00/06648, cited by applicants).

With regard to the use of applicants (specific) flame proofing agents, Sun discloses the use of flame retardants at column 6, lines 4-6 and the secondary reference discloses applicants flame retardants for rubber modified thermoplastics and therefor use of the flame retardants of the secondary reference in the primary reference, would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention motivated by the desirability off a flame retardant composition, absent any showing of surprising or unexpected results

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kempner et al. (US 5,276,092) in view of Van der Helder, cited above.

Kempner discloses a composition containing two grafted lattices both produced using persulfate/redox (although the redox portion of the system may or may not be present at column 7 lines 11-19) and which are "co-microagglomerated" (column 12, lines 46-60). Thermoplastics such as polycarbonates or polyamides may be added at column 5, lines 55-64). Flame retardants may be added at column 5, lines 30-35.

There are no specific examples using applicants' specific thermoplastics or flame retardants. However choice of applicants thermoplastics from the primary reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results, absent any showing of surprising or unexpected results.

With regard to the use of applicants (specific) flame proofing agents, Kempner discloses the use of flame retardants and the secondary reference discloses applicants flame retardants for rubber modified thermoplastics and therefore use of the flame retardants of the secondary reference in the primary reference, would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention motivated by the desirability of a flame retardant composition, absent any showing of surprising or unexpected results.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis at telephone number 571 272 1075.

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Jeffrey C. Mullis  
J Mullis  
Art Unit 1711

JCM

4-20-05

Jeffrey Mullis  
Primary Examiner  
Art Unit 1711

A handwritten signature in black ink, appearing to be 'JCM', located below the printed name of Jeffrey Mullis.